In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 202

HERMAN WILLIAMS AND BENJAMIN SCOTT, JR.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 32; Pet. App. A) is reported at 359 F. 2d 67.

JURISDICTION

The judgment of the court of appeals was entered on April 14, 1966 (R. 34; Pet. App. B). A petition for rehearing was denied on May 11, 1966 (R. 40; Pet. App. C). The petition for a writ of certiorari

was filed on June 6, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was adequate proof of venue.

STATEMENT

After waiving a trial by jury, petitioners were convicted by the United States District Court for the Southern District of Georgia of operating an illegal distillery in violation of the Internal Revenue Code [1] (R. 1-2, 21-24). Each petitioner was sentenced to a general term of 1 year and 1 day (R. 22-24), and the court of appeals affirmed *per curiam*.

At the trial, three United States Treasury agents testified that they raided a still operating in the woods on Skidaway Island on February 28, 1963 (R. 6-15). One of the agents testified that he saw four men pouring mash into the still, that the men ran away when he approached, and that he stopped petitioner Williams, who broke away and was subsequently caught by another agent (R. 8-9, 13). Another agent testified that he caught petitioner Scott as he attempted to escape from the site (R. 14-15).

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[1] Counts 1 and 3 charged, respectively, unlawful possession and custody of a still without having the same registered and without having the required sign posted. See 26 U.S.C. 5601(a) and 5179; 26 U.S.C. 5681 and 5180. Count 2 charged carrying on of the business of a distiller without having given bond (26 U.S.C. 5601(a)(4)), and count 4 charged working at a distillery upon which the required sign was not posted (26 U.S.C. 5681(c) and 5180).

ARGUMENT

There is no merit in petitioners' contention that there was a failure of proof as to venue. The decisions, including cases erroneously alleged by petitioners to be in conflict with the decision below,[2] are in agreement that venue need not be proved by direct and positive proof but may be inferred from the evidence as a whole. See *Weaver* v. *United States*, 298 F. 2d 496 (C.A. 5); *Holdridge* v. *United States*, 282 F. 2d 302 (C.A. 8); *United States* v. *Jones*, 174 F. 2d 746 (C.A. 7).

In this case, three federal agents testified that on February 28, 1963, they were working out of the Savannah office of the Alcohol and Tobacco Tax Unit and that, on this date, they participated in the seizure of a still on Skidaway Island (R. 6-7, 12-13, 14). As the court below held, the trial court, as trier of the facts, properly took judicial notice of the fact that Skidaway Island is in the Southern District of Georgia. See *Weaver* v. *United States*, *supra*; *United States* v. *Harris*, 331 F. 2d 600 (C.A. 6).

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[2] Contrary to petitioners' contention, this Court's decision in *Johnson* v. *United States*, 323 U.S. 273, does not concern the sufficiency of proof of venue. In *United States* v. *Jones*, 174 F. 2d 746 (C.A. 7), relied upon by petitioner, the court pointed out that it could take judicial notice that Chicago was in the district, but that there was no proof that the streets named in the testimony were in Chicago.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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